HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Appeal No.544 of 2007

Between:

The Government of Andhra Pradesh,
Finance Department, Hyderabad and others

. . .Appellants

AND

M/s.Perfect Services

. . .Respondent

:: JUDGMENT ::

Counsel for the appellants : Government Pleader for Roads and Buildings

Counsel for the respondent : Shri M.Ratna Reddy

12th July, 2007

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Per G.S.SINGHVI, CJ

This is an appeal by the Government of Andhra Pradesh and two others for setting aside order dated 16.4.2007 passed by the learned Single Judge in Writ Petition No.5763 of 2007, whereby he quashed tender notice dated 2.3.2007 issued by the Executive Engineer (R&B), East Building Division, Hyderabad (appellant No.3 herein) for award of work for comprehensive maintenance i.e. sweeping and cleaning of BRKR Bhavan, Hyderabad for the year 2007-2008.

The respondent is a registered contractor engaged in building maintenance works, housekeeping etc. It was awarded work for comprehensive maintenance i.e. sweeping and cleaning of BRKR Bhavan, Hyderabad for the year 2006-2007. Just before expiry of the term of contract, the respondent filed Writ Petition No.5763 of 2007 questioning tender notice dated 2.3.2007 issued by appellant No.3 for award of work relating to maintenance i.e. sweeping and cleaning of BRKR Bhavan for the year 2007-2008. In the affidavit filed by him, Shri B.C. Naidu, the Proprietor of the respondent, averred that in terms of the policy contained in G.O.Rt.No.2501, dated 13.7.2006 issued by the Finance Department, the tender inviting authority is duty-bound to incorporate the enhanced rates fixed by the government for payment of wages to the persons engaged for services like computer works, driving, sweeping and scavenging, but in complete disregard of the government's policy, appellant No.3 issued the impugned notice. He further averred that appellant No.3 deliberately reduced the period of the annual maintenance contract from one year to six months and this has been done with an oblique motive to favour someone else.

In the counter-affidavit filed by him, Shri K. Sudershan Reddy, Executive Engineer, Roads and Buildings, East Building Division averred that vide G.O.Rt.No.2501, dated 13.7.2006, the State Government increased the remuneration payable to persons engaged by the outsourcing agencies for doing the work of Junior Assistant, Typist, Junior Steno, Senior Steno, Driver, Attender/Class IV, Lift Operator, Data Entry Operators, Data Processing Officers and not for those engaged for doing sweeping and scavenging works. According to Shri Reddy, the respondents have been ensuring payment of wages to skilled/semi-skilled/un-skilled employees in accordance with G.O.Ms.No.40, dated 27.1.2005 issued by the Commissioner of Labour. In paragraphs 5, 6 and 7 of his affidavit, Shri K. Sudershan Reddy averred as under:

> 5. It is submitted that the writ petitioners further claims that application of G.O.Ms.No.257, dt.23.11.2005 is not being applied in so far as the sweepers are concerned. In fact, the said G.O.Ms.No.257, dt.23.11.2005 is applicable for the annual maintenance contract for electrical items like lifts, AC Pumps, Generators etc. for a period of 3 years. But the present tender notification dt.2.3.2007 has been issued only for a period of 6 months as the Government of Andhra Pradesh has issued Circular Memo No.203/2003/1, dt.21.4.2003, that while finalizing the tenders for the purpose of house-keeping, security etc., heads of the department, ensures with the bid amount, and takes care of the minimum wages fixed by the Commissioner of Labour, as well as the contributions to the Provident Fund and ESI, and in pursuance of the said Circular Memo and the Notification issued by the Commissioner of Labour, dt.27.1.2005, is being implemented and basing on the said Circular this office has scrupulously following the instructions issued by the Government of Andhra Pradesh and the same are being notified in the tender, and as such there is no violation of any Government Memo or Circular instructions issued by the Government of Andhra Pradesh, and as such the plea of the writ petitioner that the GOs are not being implemented or the enhanced remuneration of wages is not being paid is absolutely baseless and unsustainable.
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> 6. It is further submitted that the Advisory Board of BRKR Building

conveyed the meeting on 12.9.2006, and in the said meeting it is suggested that the entire package of the building including maintenance of lifts etc. should be outsourced by one single private agency and in pursuance of the said meeting held, the 1st respondent has issued Circular Memo No.1790/B.II/2007/1, dt.28.2.2007, has instructed this office to explore the possibility of having a total comprehensive maintenance contract for BRKR Building, comprising maintenance of 6 lifts as well as sweeping and cleaning. It is pertinent to submit that as the lift operator contract which has already been issued, the contract is being completed on 13.10.2007,and in order to see that the sweeping and cleaning maintenance also is given for the same outsourcing agency after calling for the tender applications as a comprehensive outsourcing agency. It has been decided that the present tender should be issued for a period of 6 months as the earlier contract expired as on 31.3.2007, and hence calling for tenders for a period of 6 months is only in view to see that a comprehensive outsourcing agency is given in regard to the maintenance of lifts etc. and hence there is no irregularity or illegality in issuing the said tender notification for a period of 6 months.

7. It is submitted that this office has issued Tender Notification dt.2.3.2007, for comprehensive maintenance i.e. sweeping and cleaning at BRKR Building, Tank Bund, Hyderabad from1.4.2007 to 30.9.2007 from ground floor to 9th floor. The last date for receipt of the application is on 21.3.2007, and only 2 applications have been submitted, and accordingly the said applications have been opened on 23.3.2007 at 12.30 PM and the finalization of the tender could not be completed due to the stay granted in W.P.No.5763/2007, dt.24.3.2007. It is pertinent to submit that the very writ petitioner who has also participated in the tender has been the lowest tenderer and he has also filed an estimated rates for the sweepers, scavengers, based on the Notification issued by the Commissioner of Labour, and as such the writ petitioners contention that enhanced rates to be issued in the Tender Notification is without any basis and as such the writ petition is liable to be dismissed in limine. This office has to scrupulously follow the Notification issued by the Commissioner of Labour fixing the minimum wages for the unskilled workers, and accordingly this office has been following the said minimum wages, and as such there is absolutely no diversion or violation of the Notification issued by the Government of Andhra Pradesh or the Commissioner of Labour from time to time, and as such there is no valid ground to interfere in the writ petition and the same is liable to be dismissed.

The learned Single Judge referred to the opening paragraphs of G.O.Rt.No.2501, dated 13.7.2006 and held that the payment of wages to the Sweepers and Scavengers at the rates prescribed by the Labour Department to unskilled workers would amount to discrimination. The learned Single Judge further held that the tender notice issued without incorporating the rates of remuneration specified in G.O.Rt.No.2501, dated 13.7.2006 was unjust and nullified the same and directed respondent No.3 to issue fresh tender notice.

We have heard learned counsel for the parties and carefully perused the record. There is no dispute between the parties that while awarding contract for execution of different types of works, the appellants have been ensuring payment of wages to the workers in accordance with the provisions of the Minimum Wages Act, 1948 and notifications issued by the government from time to time. It is not even the pleaded case of the respondent that the appellants have not ensured compliance of the labour welfare legislations including the Minimum Wages Act. Therefore, it is impossible to fathom any tangible reason for the grievance put forward by the respondent against the tender notice dated 2.3.2007 and we do not find any justification for the exercise undertaken by the learned Single Judge under a mistaken impression that the person engaged by the outsourcing agency for doing the work of sweeping and scavenging will not be paid remuneration prescribed by the State Government.

We are further of the view that the order under challenge is based on a complete misreading of the policy decision contained in G.O.Rt.No.2501 dated 13.7.2006. No doubt, the opening paragraph of the G.O. makes a reference to the work of sweeping and scavenging, but paragraph 3 thereof does not specify remuneration payable to those engaged for doing that work. The rates of remuneration payable

to those engaged as Attender/ Class-IV cannot automatically be made applicable to those engaged for doing the work of sweeping and scavenging. We can take judicial notice of the fact that in the Last Grade Service of the State, which is governed by Andhra Pradesh Last Grade Service Rules, 1992, there are 12 different categories of posts. The post of Attender falls in Category-2, whereas the post of Sweeper-cum-Scavenger falls in Category-8. The duties of these posts are also different. Therefore, the persons who are engaged to work as Sweepers of Scavengers cannot be automatically equated with Attenders/Class-IV employees. As a corolloary, it must be held that the tender notice issued by appellant No.3 could not have been annulled only on the ground that it does not specify the remuneration payable to those who may be employed by the outsourcing agency for doing the work of sweeping or scavenging.

Reference to the minimum of the pay scales in the last two paragraphs of the order under challenge gives an impression that in the opinion of the learned Single Judge, the employees engaged by the outsourcing agencies are required to be paid wages in the regular time scale by being fixed at the minimum. This must be treated as clearly erroneous because the outsourcing agencies are required to pay fixed remuneration to the persons engaged by them for doing different works. The amount of fixed remuneration may coincide with the minimum of the pay scale, but the employees cannot claim payment of salary at the minimum of pay scales as of right.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside and the writ petition filed by the respondent is dismissed.

We would have saddled the respondent with costs for filing frivolous litigation, but refrain from doing so because the appeal is being disposed of at the admission stage.

As a sequel to allowing the appeal, WAMP No.1052 of 2007 filed by the appellants for interim relief is disposed of as infructuous.

G.S.SINGHVI, C.J.

12th July, 2007

C.V.NAGARJUNA REDDY, J.

svs